



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on November 2, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-6258

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicants: **Spanair, S.A. and United Air Lines, Inc.**

Date Filed: September 23, 1999

Relief requested:

Spanair, S.A.--Exemption from 49 U.S.C. § 41301 to (1) engage in scheduled foreign air transportation of persons, property and mail between Madrid, Spain, and the U.S. coterminal points Los Angeles, San Francisco, Boston, Miami, Orlando, New York, San Diego, Seattle, Atlanta, Chicago, Philadelphia, New Orleans, Houston and Dallas/Ft. Worth, on a code share basis only; and (2) serve Washington, D.C. (Dulles) as a coterminal point in conjunction with the points named above.

Spanair, S.A.--Statement of authorization under 14 CFR Part 212 to display United Air Lines' designator code ("UA") on flights operated by Spanair between Washington, D.C. (Dulles) and Madrid and beyond Madrid to the Spanish coterminal points Barcelona, Malaga, and Palma de Mallorca.¹

United Air Lines, Inc.--Statement of authorization under 14 CFR Part 212 to display Spanair's designator code ("JK") on flights operated by United between Washington, D.C. (Dulles) on the one hand and the coterminal points Los Angeles, San Francisco, Boston, Miami, Orlando, New York, San Diego, Seattle, Atlanta, Chicago, Philadelphia, New Orleans, Houston, and Dallas/Ft. Worth.²

If renewal, date and citation of last action: New authority

Applicant representative: Joel T. Camche--(212) 980-3773 (Spanair, S.A.)

Jeffrey A. Manley--(202) 879-5161 (United Air Lines, Inc.)

Responsive pleadings: On October 4, 1999, The Metropolitan Washington Airports Authority filed an answer in support of the joint application.

DISPOSITION

Action: Approved

Action date: November 2, 1999

Effective dates of the exemption authority granted Spanair, S.A.--November 2, 1999-November 2, 2000

The statements of authorization granted to Spanair and United Air Lines were effective when taken November 2, 1999 and will remain in effect indefinitely, subject to the conditions listed below:

Basis for approval (bilateral agreement/reciprocity): 1973 Air Transport Services Agreement between the United States and Spain, as amended

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Spanair--Order 95-1-33

☒ United Air Lines--Certificate of Public Convenience and Necessity

¹ United's service beyond Madrid will be operated on a blind-sector basis with no local traffic carried under United's code between the named points in Spain. United holds the requisite underlying authority on Route 603 of its certificate to serve between Washington, D.C. and the named Spanish points. See Order 97-1-10.

² Spanair's service beyond Washington, D.C. (Dulles) will be operated on a blind-sector basis with no local traffic carried under Spanair's code between the named U.S. points.

Special conditions/Partial grant/Denial basis/Remarks:

The exemption authority granted to Spanair, in addition to the conditions described above, is limited to services on a code-share basis only on flights operated by United Air Lines.

The statements of authorization granted to Spanair and United Air Lines are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) Spanair and United Air Lines continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Spanair and/or United Air Lines must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-99-6258.

(c) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area whose airspace the Federal Aviation Administration has issued a flight prohibition.

(d) The authority granted here is specifically conditioned so that neither Spanair nor United Air Lines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.³

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

³ We note the code-share agreement as submitted did not include provisions regarding exclusive dealings between code-share parties. Should the parties subsequently decide to amend their code-share agreement or any other agreement between them to include any provision relating to an exclusive arrangement between the parties regarding their code-share services, that amended language must first be submitted for consideration by the Department.